

Chief of Staff, Section 1, Order No. 21
Provisions for the Establishment of a Military Law and Trial
Rules and Regulations of the CHINA Expeditionary Force.

To: All subordinate units thereof.

The military law and trial rules and regulations for the CHINA Expeditionary Force shall be enacted according to the following draft:

NISHIO, Hisano, Commanding General, CHINA Expeditionary Force.

1 October 1939.

Military Law and Trial Rules and Regulations of the
CHINA Expeditionary Force.

Art. I. Any individual who violates the provisions of the military law of the CHINA Expeditionary Force shall be tried by a military tribunal.

Art. II. The military tribunal shall be established by the CHINA Expeditionary Force, and the various subordinate armies under its jurisdiction.

Art. III. The military tribunal of the CHINA Expeditionary Force shall have jurisdiction over all cases designated by the Commanding General.

Art. IV. Aside from the provisions of the preceding article, the military tribunals of the various subordinate Armies thereof shall have jurisdiction over such cases of violations occurring

within the respective zone of operation of each army.

Regardless of the stipulations of the preceding paragraphs, the Commanding General of the CHINA Expeditionary Force reserves the right to designate the military tribunal which shall have jurisdiction over a special case.

Art. V. The Commanding General of the CHINA Expeditionary Force, or the commanding general of the subordinate Army under its jurisdiction shall be the president of the military tribunal.

Art. VI. The Military tribunal shall consist of three judges. The judges shall be two officers and one judge advocate, under the supervision of the president.

Art. VII. The military tribunal shall be in session with the judges, the prosecutor, and the clerk in attendance.

Art. VIII. In the trial of a foreigner other than a Chinese, the military tribunal shall first obtain the official sanction of the Commanding General of the CHINA Expeditionary Army.

Art. IX. Any point not covered by this law shall be governed as much as possible by the rules and regulations of a special courts martial.

Additional Clause: This law shall be effective as of 1 October 1939.

參謀長 第一幕命令第二十一號

支那派遣軍軍法會議ノ裁判規則及裁制制定ニ關スル件
閣下全部處ニ對シテ

支那派遣軍軍法會議ニ裁判規則及規程左案ノ通り制定ス

支那派遣軍總司令官 西 尾 壽 造

昭和十四年（一九三九年）十月一日

支那派遣軍軍法會議ニ裁判規則及規程

第一條 支那派遣軍軍法ノ實施ニ違反スル者ハ軍法會議ニ依リ裁判ニ

附セラルベシ

第二條 支那派遣軍並ニ屬下編屬各軍ハ軍法會議ヲ設置スベシ

第三條 支那派遣軍軍法會議ハ總司令官指定スル凡ニル事件ニ關シ裁

判權ヲ有スルモノトス

第四條 前條ノ規定ノ外、管下各軍ノ軍法會議ハ各軍作戦地域内ニ發

生スル起訴事件ニ關シ裁判權ヲ有スルモノトス

前條ノ規定ニ拘ラズ支那派遣軍總司令官ハ特種ノ事件ニ關シ裁判權

ヲ有スベキ軍法會議ヲ指定スルノ權限ヲ習得スルモノトス

第五條 支那派遣軍總司令官又ハ管下各軍司令官ハ軍法會議ノ裁判長

タルベキモノトス

第六條 軍法會議ハ三名ノ將士ヨリ成ル。將士ハ裁判長ノ指揮ニ隷屬

シ三名ハ特種ニシテ一名ハ法醫官トス

第七條 軍法會議ハ將士、檢察官及書記ノ陪席ヲ以テ會議ヲ開クモノ

トス

第八條 中國人以外ノ外國人ヲ裁判セントスルトキハ、軍法會議ハ豫

メ支那派遣軍總司令官ノ正副ノ許可計受クベシ

第九條 本條ニ規定サキ等ニ關シテハ總リ特別軍法會議ニ關ス

ル規則及細則ノ定ムル所ニ依ル

附則 本法ハ昭和十四年（一九三九年）十月一日ヨリ之ヲ施行ス

Def. Doc. # 1027-D

General Order No. 538

Matters Relating to Mitigation of the
Punishment of the Enemy Airmen.

FROM: IMA, Shunroku, Commanding General, CHINA Expeditionary
Force.

TO: SHIMOMURA, Sadamu, Commanding General, 13 Army.

14 October 1942.

1. In accordance with the foregoing, the sentences meted out by the 13 Army Military Tribunal on 23 August 1942, against the enemy airmen: MAJOR Robert L. HATE, G. J. HATE, Robert L. BARR, George; and DESHACK, Jacob will be mitigated.

2. The death sentence shall be commuted to life imprisonment.

3. The prosecutor of the military tribunal will notify the prison warden and the prisoners concerned of this fact, and shall make note of this fact in the trial record.

In making this announcement to the convicted men, special mention must be made of the Emperor's leniency.

When this announcement has been made by the prosecutor, the president of the tribunal will immediately report this fact.

DISPATCHED: 1250 hours
RECEIVED: 1354 Hours, 22 October
General Staff Wire No. 20.

TO: CHIEF OF STAFF.

FROM: Chief of General Staff (Dispatch from NANKING).

At present there are various arguments regarding the application of International Law as a basis for the disposition of the American airmen. Moreover, there is always the possibility of the enemy taking advantage of this point in diffusing their propaganda, when the verdict is revealed.

Accordingly, take strictest precautionary measures to conceal any information regarding the place of confinement.

Def. Doc. # 1027-D

General Order No. 538

Matters Relating to Mitigation of the
Punishment of the Enemy Airmen.

FROM: IATA, Shunroku, Commanding General, CHINA Expeditionary
Force.

TO: SHIMOMURA, Sadamu, Commanding General, 13 Army.

14 October 1942.

1. In accordance with the foregoing, the sentences meted out by the 13 Army Military Tribunal on 23 August 1942, against the enemy airmen: Robert L. BARR, George J. DESHAGAN, and G. J. WHITE, will be mitigated.

2. The death sentence shall be commuted to life imprisonment.

3. The prosecutor of the military tribunal will notify the prison warden and the prisoners concerned of this fact, and shall make note of this fact in the trial record.

In making this announcement to the convicted men, special mention must be made of the Emperor's leniency.

When this announcement has been made by the prosecutor, the president of the tribunal will immediately report this fact.

DISPATCHED: 1250 hours
RECEIVED: 1354 Hours, 22 October
General Staff Wire No. 20.

TO: CHIEF OF STAFF.

FROM: Chief of General Staff (Dispatched from NANKING).

At present there are various arguments regarding the application of International Law as a basis for the disposition of the American airmen. Moreover, there is always the possibility of the enemy taking advantage of this point in diffusing their propaganda, when the verdict is revealed.

Accordingly, take strictest precautionary measures to conceal any information regarding the place of confinement.

一般命令 第五三八號

敵飛行士減刑ニ關スル件

支那派遣軍總司令官

第十三軍司令官

一九四二年十月十四日

畑 俊 六
下 村 定
宛 發

一、前記ニヨリ、敵飛行士「コバート、J、ミルダー」「C、J、ニールセン」「ロバート、L、ハイト」「ジョージ、バー」及ビ「ビビイコブ、デシヤジャ」ニ對シ一九四二年八月二十八日第十三軍

軍事裁判所ノ課シタル判決ハ輕減セラルベシ

二、死刑判決ハ紙身禁錮刑ニ減刑スベシ

三、軍事裁判所檢察官ハ本事實ニ關シ看守長及ビ關係收監者ニ通告シ

裁判記録ニ本事實ヲ記載スベシ既決者ニ本件通告ヲナスニ當リテ

ハ陛下ノ御慈悲ニ付特ニ言及スルモノトス

檢察官本件通告ヲナシタル場合ハ裁判長ハ直チニ本事實ヲ報告スベシ

十二時五十分

發

十月二十二日十三時五十四分發

參謀本部 電 第二〇號

參謀長宛

參謀總長鑒（南京ヨリ發信）

目下國際法ヲ米國飛行士處分ニ對スル基準トシテ適用スルニ關シ種々議論アリ、尙又裁決ガ公表サレルニ於テハ常時敵ガ之ヲ利用シテ彼等ノ宣傳ヲ傳播スル可能性アリ
從ツテ、監禁場所ニ關スル凡ユル情報ヲ秘匿スル機最モ嚴重ナル警戒手段ヲ採ルベシ。

CHINA Expeditionary Force Order No.4

Military Law Concerning the Punishment of Enemy
Airmen Interpretation of Article 13.

This article clearly states that all enemy airmen who raid the Japanese homeland, MANCHUKUO, or our zones of military operation, or all persons who violate the provisions of the International Law governing warfare or who commit so-called war crimes are subject to military punishment.

Article XIII, the regulation concerning the established rules of land warfare, of the supplementary provisions annexed to the Covenant governing the recognized rules and regulations of land warfare which states "A combatant is limited in the choice of methods to be employed against an enemy", constitutes the basic principle of the rules of modern warfare.

Although this article does not clarify the extent of this limitation, it constitutes the basic idea of the International Law governing warfare with a view towards bringing the demands of military operations and the claims of humanity into concordance. From a common sense view point, it clarifies such acts contrary to human decency, and it can be said that this article prohibits any and all such actions and measures of warfare absolutely inexcusable in the prosecution of war.

Article XXIII, of the same regulation, lists acts which are specifically prohibited, but the acts that are prohibited under Article XXII are not limited to the aforementioned.

CHINA Expeditionary Force Order No.4

Military Law Concerning the Punishment of Enemy
Airmen Interpretation of Article IX.

This article clearly states that all enemy airmen who raid the Japanese homeland, MANCHUKUO, or our zones of military operation, or all persons who violate the provisions of the International Law governing warfare or who commit so-called war crimes are subject to military punishment.

Article XXII, the regulation concerning the established rules of land warfare, of the supplementary provisions annexed to the covenant governing the recognized rules and regulations of land warfare which states "A combatant is limited in the choice of methods to be employed against an enemy", constitutes the basic principle of the rules of modern warfare.

Although this article does not clarify the extent of this limitation, it constitutes the basic idea of the International Law governing warfare with a view towards bringing the demands of military operations and the claims of humanity into concordance. From a common sense view point, it clarifies such acts contrary to human decency, and it can be said that this article prohibits any and all such actions and measures of warfare absolutely inexcusable in the prosecution of war.

Article XXIII, of the same regulation, lists acts which are specifically prohibited, but the acts that are prohibited under Article XXII are not limited to the aforementioned.

Article II of this military law is an adaptation of Article XXII and XXIII as principles for the rule concerning aerial warfare.

If the interpretation is made on the foregoing principles, then the acts enumerated under Article II may be construed as violations of the provisions of International Law governing warfare.

The term "objective" in the clause "with the objective of cowering, intimidating, killing or maiming civilians" in Article II Section 1, Paragraph 1, means the principle motive and primary aims of the act. Cases in which an act was committed with the primary objective of attacking military targets, but with full knowledge of the fact that such an act would in all probability cow, intimidate, kill or maim civilians are included.

The term "carry out an attack" means an attack which can be sufficiently recognized as realizing the foregoing objective, and alludes to those cases in which civilians have been cowed, intimidated, killed or maimed.

The term "objective" in Article II Section 2, Paragraph 1, is similarly interpreted.

The acts listed under Article II, Section 3, Paragraph 1, while not directed against such "objectives" as expressed in Sections 1 and 2, aside from those cases which are inevitable, refer to acts of attack carried out against objectives other than

those with military significance beyond a degree necessary for the prosecution of warfare.

The acts listed under Section 4, refer to such acts as, for instance, the use of poison gas, or the employment of weapons for the diffusion of poison, etc.

Paragraph 2 of Article II refers to those cases as is also mentioned in which an act was committed with the objective of effecting such acts violating human conventions as listed under Paragraph 1, but which failed to realize its objective; viz., the attack may have been carried out but the bombs may have been duds, or the bombs may have been dropped into a river without causing any damage.

中國派遣軍命令第四號

敵航空兵處罰ニ關スル軍法第二條ノ解釋

本條ハ明ニ、日本々土滿洲國或ハ我が作戰地帶ヲ襲撃スル全テノ敵國航空兵、或ハ戰時國際法ノ條項ヲ紊ルカ又ハ所謂戰爭犯罪ヲ犯ス全テノ者ハ軍刑法ノ適用ヲ受クベキモノナルコトヲ述ベテキル

「戰闘員ハ敵ニ對シテ用フベキ手段ノ選擇ニ制限ヲ受クル」ト記シテアル、陸上戰闘ニ關スル公法ノ規定及規則ヲ支配スル協約ニ附帶シアル附則ノ第二十二條即チ守ラレテキル陸戰法規ニ關係アル規則ハ近代戰爭法規ノ根本原則ヲ成スモノデアロ

本條ハ此ノ制限ノ範圍ヲ明瞭ニセズト雖モ軍事作戰ノ要求ト人道上ノ要求トヲ一致セシメントスル戰時國際法ノ根本感念ヲ成スモノデアロ。常戰的觀點ヨリ觀テ本條ハ、人道的德義ニ反スルガ如キ行爲ヲ明確ナラシメテキル。且又本條ハ戰爭遂行上絕對ニ許シ得ザルガ如キ如何ナル又ハ全テノ戰爭行爲

並ニ手段ヲ禁止スルモノナリト言ヒ得ル

同規則ノ第二十三條ハ、特ニ禁止サレタル行爲ヲ列記スルモ、第二十二條ニ於テ禁止サレタル行爲ハ前述中ニ於テハ制限シテキチイ

本法ノ第二條ハ航空戰ニ關スル法則ノ原則トシテ第二十二條及二十三條ヲ創案セルモノデアル。

茲ニ前述ノ原則ニ解釋ガ下サレルヲナバ第二條ニ列舉セラレタル行爲ハ戰時國際法ノ條項ヲ紊ルモノトシテ解釋サルベキデアル。

第二條第一項第一節中ノ「一般人ヲ威嚇・脅喝或ハ殺傷セントノ目的ヲ以テ」トイフ文中ニ於ケル「目的」ナル語ハ、該行爲ノ根本動機及根本目的ヲ指シ指スモノデアル。軍事目標ヲ攻撃スル目的ナルモ、斯ル行爲ガ必ズヤ一般

人ヲ威嚇。脅喝或ハ殺傷スルニ至ルコトヲ知悉シテ、或ル行爲ヲ犯シタル場合ハ、此ノ中ニ包含セラルルモノヲ指スアル。

「攻撃ヲ行フ」ナル言葉ハ、前述ノ目的ヲ實現スルモノトシテ十分ニ認めラ
ル。攻撃ヲ指スモノニシテ、且、一般人ガ威嚇・脅喝或ハ殺傷セラレタル場合
ヲ指スモノデアル。

第二條第三章第二節中ノ「目的」ナル言葉モ同様ニ解釋サレテキル

第二條第三章第一節中ニ記載サレタル行爲ハ第一章及第二章ニ述ベラレタル
ガ如キ「目的」ヲ指スモノニハアラザルモ、不可避ナル場合ヲ除キ、戦争

遂行ニ必要ナ程度ヲ越ヘテ軍事の意味ヲ有スルモノ以外ヲ目的物トシテ行ハレタル攻撃ニ言及シテキルノデアル。

第四章中ニ記載サレタル行爲ハ、例ヘバ毒ガスノ使用或ハ毒撒撒布用ノ武器使用等ノ如キ行爲ニ言及シテキルノデアル。

第二條第二節ハ、之又既ニ述ベル通り第一節ニ記載サレタルガ如キ人類ノ慣習法ヲ察ルガ如キ行爲ヲナサントスル目的ヲ以ツテ或ル行爲ガ行ハレタルモ其ノ目的ヲ實現スルニ至ラザリシ場合即チ攻撃ハ遂行サレタルモノモ爆彈ガ不發彈ナリシカ或ハ爆彈ガ川ニ投下サレ何等損害ヲ與ヘザリシガ如キ場合ニ言及シテキルノデアル。

Def. Doc. #1027-E

SUPPLEMENTARY
PROCLAMATION

All enemy airmen who raid the Japanese homeland, MANCHUKUO, or our zones of military operations, and come within the areas of our jurisdiction, or who violate the provisions of International Law governing warfare shall be committed to trial by military tribunals and shall be subjected to death or severe punishment as war criminals.

補足宣言書

日本本土、滿洲國又ハ作戦地帯ヲ空襲シ又我ガ管轄區域内ニ侵入スル
全ユル敵航空兵、或ハ戦時國際法ヲ犯ス凡ユル敵航空兵ハ軍事裁判ニ
依リ裁判ニ附セラレ、或ハ戦争犯罪者トシテ死刑又ハ重刑ヲ受ルモノ
トス。

Def. Doc. No. 1027 - G

TO : Chief of Staff

FROM: Chief of General Staff (NANKING)

22 October 1942

General Staff Wire No. 452
Staff Wire No. 200 (Transmitted).

In the proclamation of the military concerning the punishment of enemy airmen - the terms "individuals who violate the provisions of International Law governing warfare" mean "individuals who in flagrant disregard of human decency commit atrocities" and this interpretation shall be as such.

Distribution of telegram:

Ko
Nami
Ro
Sho

參謀長 殿

一九四二年十月二十二日

參總電 第四五二號

參電 第二〇三號（傳達）

敵航空兵爲國ニ關スル軍令布告ニ於テ「戰時國際法規ノ條項ニ違反セル者」ナル者ハ「明白ニ人道上德義ヲ無視シテ殘虐行爲ヲナス者」ノ意ナリ。爾今此ノ解釋ハ斯ノ如シト心得ラルベシ。

電報配布先

「コ」「ナミ」「ロ」「シヨ」

參謀總長（南京）

參謀長 殿

一九四二年十月二十二日

參總電 第四五二號

參電 第二〇三號（傳達）

敵航空兵爲國ニ關スル軍令布告ニ於テ「戰時國際法規ノ條項ニ違反セル者」ナル語ハ「明白ニ人道上德義ヲ無視シテ殘虐行爲ヲナス者」ノ意ナリ。爾今此ノ解釋ハ斯ノ如シト心得ラルベシ。

電報配布先

「コ」「ナミ」「ロ」「シヨ」

參謀總長（南京）